

large pieces of steel that were dropped to the ground. Appellant was exposed to noise until July 13, 2003, when he was removed from his normal duties because of a serious employment-related injury. He had a history of hearing problems arising out of his military service, including chronic otitis media, and perforation of the left tympanic membrane. Appellant used hearing protection at work and at home, when he used loud lawn equipment.

A noise exposure record from the employing establishment indicated that he worked around chipping guns, needle guns, scrapers, ball-pen hammers, high efficiency air purifiers, welding machines, scrapers, and large pieces of metal dropping onto the ground. It also stated that appellant was on active duty in the Navy for 25 years, during which time he worked on eight ships performing deck preservation. On July 2, 1993 the Department of Veterans Affairs (VA) awarded appellant 10 percent disability for tinnitus. It found that appellant also had bilateral hearing loss, chronic otitis media, and a perforation of the left tympanic membrane that were service connected, but not compensable because they were less than 10 percent disabling.

On September 16, 2005 the Office requested medical evidence establishing appellant's hearing loss.

On October 24, 2005 the employing establishment controverted appellant's claim on the grounds that he had a preexisting hearing loss and was required to wear hearing protection on the job. The employing establishment stated that it provided appellant with hearing protection approved by the Occupational Safety and Health Administration. Audiograms conducted from 1994 to 2002 indicated that appellant was regularly exposed to noise. An audiogram conducted by the employing establishment on October 13, 2005 noted that appellant had reportable hearing loss in the right ear and that he was no longer fit to work in noise unless he was cleared by a medical specialist. A noise exposure data report stated that, from 1994 to 2003, appellant's average noise in an eight-hour workday was greater than 84 decibels at least 30 days per year. The employing establishment stated that the decibel output of a chipping hammer was 104 decibels without protection and 80 decibels with protection and for a welding machine was 90 to 95 decibels without protection and less than 80 with protection. The overall noise exposure from steel hitting the ground is negligible because of its short duration.

On February 7, 2006 the Office prepared a statement of accepted facts. The statement included the fact that appellant had bilateral hearing loss connected to his military service that was less than 10 percent disabling, for which he did not receive compensation, and bilateral tinnitus, which was 10 percent compensable. Appellant's preexisting chronic otitis media was also noted.

On February 17, 2006 the Office referred appellant for a second opinion examination with Dr. Gerald Randolph, a Board-certified otolaryngologist. On March 14, 2006 Dr. Randolph examined appellant. He did not submit a narrative history of appellant's hearing loss, but stated that the history taken did not vary significantly from the statement of accepted facts. Dr. Randolph stated that an audiogram taken in 1994 indicated that appellant had sensorineural hearing loss, which was not ratable, at the beginning of his federal employment. He found that the hearing loss that had taken place during the course of appellant's federal employment was "not in excess of that predicted on the basis of presbycusis." He stated that appellant's workplace noise exposure was not adequate to have caused appellant's increased hearing loss if

he used adequate hearing protection. Dr. Randolph found that presbycusis was the only factor identified in appellant's increased hearing loss. His physical examination revealed thickening of the right tympanic membrane and a healed perforation of the left eardrum. Dr. Randolph stated that appellant's air conduction was greater than his bone conduction. He diagnosed bilateral sensorineural hearing loss preexisting appellant's federal employment. Dr. Randolph opined that appellant's increased hearing loss was not due to his federal employment because it had "not increase in severity due to noise." Appellant's audiometric tests were considered reliable.

On March 16, 2006 an Office medical adviser, Dr. Daniel Zimmerman, concurred with Dr. Randolph's finding that appellant's increased hearing loss was not caused by his federal employment.

By decision dated April 19, 2006, the Office denied appellant's claim for compensation on the grounds that his increased hearing loss was not causally related to his federal employment.

On April 12, 2007 appellant requested reconsideration. He contended that the statement of accepted facts contained information that should have been excluded according to the Office's procedure manual. Appellant noted that section 2.809.14 of the manual stated that descriptions of benefits received should not be included in the statement of accepted facts because they were irrelevant, inappropriate, prejudicial or better discussed elsewhere. He contended that the percentage of disability awarded by the VA should have been excluded because it may have biased Dr. Randolph, who seemed excessively concerned with appellant's military service during the examination. Appellant requested that a new statement be prepared and that he be referred to another second opinion physician. He also noted that Dr. Randolph was asked for a narrative history of the hearing loss, but failed to provide one. Appellant submitted a letter from the VA dated December 27, 2006 stating that his service-related hearing loss percentages had not changed.

On May 4, 2007 the Office provided Dr. Zimmerman with the materials submitted by appellant and asked for an opinion as to whether they were sufficient to support appellant's claim of employment-induced hearing loss. On May 11, 2007 Dr. Zimmerman stated that the VA decision was medically irrelevant to establishing appellant's claim of civilian employment hearing loss. He advised that Dr. Randolph's opinion related to the causation of appellant's hearing loss was correctly and medically based.

By decision dated May 22, 2007, the Office denied modification of the April 19, 2006 decision. The Office found that appellant presented no medical evidence sufficient to establish that his increased hearing loss was caused by his federal civilian employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained

¹ 5 U.S.C. §§ 8101-8193.

in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

ANALYSIS

The Office has accepted that appellant was exposed to an eight-hour average noise of greater than 84 decibels at least 30 days per year. The issue to be resolved is whether the medical evidence establishes that this exposure caused or contributed to his hearing loss.

Dr. Randolph diagnosed bilateral sensorineural hearing loss preexisting appellant's federal employment. His physical examination revealed thickening of the right tympanic membrane and a healed perforation of the left eardrum. Dr. Randolph stated that an audiogram taken at the beginning of appellant's federal civilian employment in 1994 indicated that appellant had unratable sensorineural hearing loss. He opined that the hearing loss that had taken place during the course of appellant's federal employment was not in "excess of that predicted on the basis of presbycusis" and had not increased in severity as it would have with additional noise damage. Dr. Randolph indicated that appellant's workplace noise exposure was not adequate to have caused appellant's increased hearing loss if he used adequate hearing protection, as he alleged. Dr. Randolph identified presbycusis as the only causal factor in appellant's hearing loss. The Board finds that Dr. Randolph's medical opinion carries the weight of the medical opinion evidence because it is rationalized and based on an accurate medical history.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

On appeal to both the Office and the Board, appellant argued that the Office improperly included his VA hearing loss ratings on the statement of accepted facts provided to Dr. Randolph. He alleged that this information biased Dr. Randolph's opinion. The Board finds that the inclusion of this information was harmless error. Dr. Randolph's medical opinion was related to the causation of appellant's current hearing loss and was based on the pattern of hearing loss during appellant's federal noise exposure. He clearly attributed any increase in loss to presbycusis. The VA ratings were immaterial to his reasoning.

Appellant also contended that Dr. Randolph failed to provide a narrative history of his hearing loss. The Board notes that Dr. Randolph reviewed the statement of accepted facts and indicated that the oral history he took did not differ from it in any significant ways. The Board finds that Dr. Randolph's medical opinion is not diminished by lack of a full narrative history.

CONCLUSION

The Board finds that appellant has not established that he sustained hearing loss causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 22, 2007 is affirmed.

Issued: December 20, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board